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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,176	09/12/2003	Tavis D. Schriefer	175-0004US	9442
29855	7590	05/06/2005	EXAMINER	
WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI, P.C. 20333 SH 249 SUITE 600 HOUSTON, TX 77070			DAVIS, CASSANDRA HOPE	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,176

Applicant(s)

SCHRIEFER ET AL.

Examiner

Cassandra Davis

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 9-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

- 5) ☐ Notice of Informal Patent Application (PTO-152)

DETAILED ACTION

Election/Restrictions

Claims 9-20 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 18, 2005.

Specification

1. The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the ring closure recited in claim 3 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. Claims 2-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

On line 1 of claims 2-8, the phrase "the labeling device" lacks antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5, 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Tarrant, U. S. Patent 4,656,767.

Tarrant teaches a cable tag comprising a flexible fastener substrate 22 comprising a plurality of loop and hook elements 28 and 30 extending outwardly from a first side 24 of the fastener substrate and a polymeric film 32 adhered to and substantially covering a second side 26 of the fastener substrate, wherein the fastener substrate and film together form a writable fastener device that may be closed around a cable 10 by a single folding motion.

Regarding claim 2, Tarrant teaches the cable tag is dimensioned for fastening around at least one wire or cable.

Regarding claim 3, Tarrant teaches the cable tag is dimensioned for fastening to a ring closer. The ring closure is not positively claimed, however, the tag can wrap around a suitable ring.

With respect to claim 5, the method limitations are not given patentable weight in the article claim.

Regarding claim 6, the plastic film 22 forms a pocket wherein a label 44 is visible through the pocket and is retained securely in the transparent pocket.

6. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Schreindl, U. S. Patent 4,906,025.

Schreindl teaches a band comprising a flexible band substrate 10 comprising a plurality of loop and hook elements 14 extending outwardly from a first side 20 and a second side 22 of the band substrate and a polymeric rectangular plate 18 affixed to and substantially covering the first side 20 of the band substrate, wherein the substrate and plate 18 forms a writable fastener device that may be closed around a cable 10 by a single folding motion. The surface of the plate 18 form a write-on surface made of smooth non-porous plastic writing surface 28 designed to be written on with a dry erase marker 26 or another suitable marker. (See column 2, lines 10-28 and column 4, lines 22-24).

Regarding claim 2, the band taught by Schreindl is dimensioned for fastening around at least one wire or cable.

Regarding claim 3, the band taught by Schreindl is dimensioned for fastening to a ring closer. The ring closure is not positively claimed, however, the tag can wrap around a suitable ring.

With respect to claim 5, the method limitations are not given patentable weight in the article claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schreindl. Although Schreindl does not positively recite the polymeric film is adapted to receive writing from a ballpoint, felt, or gel pen, Schreindl recited that the writing plate 18 can receive writing from a dry erase marker or another suitable marker. Since the applicant does not disclose that using a ball point, felt, or gel pen solves any stated problem or is for any particular purpose, it appears that providing a writing surface adapted to receive writing from any suitable writing instrument would perform equally well in provide a erasable writing band.

9. Claim 8 and 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Tarrant in view of Mason, U. S. Patent 5,186,499.

10. Mason teaches an erasable label 22 comprising a top layer 27 made of a transparent polypropylene about 1.0 mil thick and a second layer 28 of vinyl polymer about 3.5 mil thick. The total thickness of the label is about 4.5 mil, which is about 5 or 6 mil. The purpose of the transparent polypropylene layer is to provide a top writing surface 31 having a texture which bonds well with the dry erase ink that is contained with pens 23. It would have been obvious to one having ordinary skills in the art at the time this invention was made to construct the erasable surface taught by Tarrant of a

polypropylene material to provide a surface adapted to receive dry erase ink provided in dry erase markers.

11. Claim 8 and 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Schreindl in view of Mason, U. S. Patent 5,186,499. Mason teaches an erasable label 22 comprising a top layer 27 made of a transparent polypropylene about 1.0 mil thick and a second layer 28 of vinyl polymer about 3.5 mil thick. The total thickness of the label is about 4.5 mil, which is about 5 or 6 mil. It would have been obvious to one having ordinary skills in the art at the time this invention was made to construct the erasable surface taught by Schreindl of a polypropylene material as taught by Mason to provide a surface adapted to receive and

12. With respect to claim 4, Mason teaches the dry erase marker comprising a porous felt tip pen having dry-erase ink. It would have been obvious to one having ordinary skill in the art at the time this invention was made to mark the tag taught by Schreindl with a felt tip marker as taught by Mason to provide a smooth tip pen to apply the ink.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cassandra Davis whose telephone number is 571-272-6642. The examiner can normally be reached on Monday-Friday 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Cassandra Davis
Primary Examiner
Art Unit 3611

CD
May 1, 2005